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## IMPORTANT FAX DOCUMENT

DATE September 2, 2008

NAME Examiner Laura Goddard  
U.S. Patent and Trademark

YOUR REF NO. U.S. Application No. 10/693,030  
273-8300

FAX NUMBER 571-272-8788

FROM Janell T. Cleveland, Patent Agent (Reg. No. 53,848)

OUR REFERENCE NO. 14014.0306U2

OUR FAX NUMBER 678-420-9301

NUMBER OF PAGES 2 (Including Cover Page)

Re: U.S. Application No. 10/693,030, filed 10/24/2003  
(Divisional of U.S. Application No. 09/170,699, filed October 13, 1998)  
Title: "METHODS FOR DIAGNOSIS OF CANCER USING erbB-3"  
Inventors: Kraus et al.

Dear Examiner Goddard, Thank you for taking the time to speak with me tomorrow. I have attached a proposed amendment to claim 43. What we were trying to do by adding new claims 60-79 was to overcome the priority rejection for the pending claims. However, claims 60-79 came under a restriction requirement. Normally this wouldn't be a problem and we would file a divisional, however, we are facing the expiration of the patent in 2009 and the divisional probably wouldn't even be examined by then. So what I've done is try to amend claim 43 so it no longer has a priority problem. Of course I understand that we need to do a response to have the claim examined, but I was hoping to at least explain what we were trying to do by amending it. By the way, specific basis for amended claim 43 can be found in the earliest priority document (US Patent 5,183,884) in the specification in Example 5, in the last paragraph before Example 1, and in the eighth paragraph of the "summary". (I apologize for the unconventional format of listing where basis can be found, but I only have the online version of the patent and don't have page numbers). Thanks, and I look forward to speaking with you tomorrow. /Janell Cleveland/

## CONFIDENTIALITY NOTE

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ATTORNEY DOCKET NO. 14014.0306U2  
App. No. 10/693,030

43. (Previously Presented) A method of ~~classifying a cancer as being correlated with a greater amount of~~ determining expression of an erbB-3 gene ~~as compared to a control,~~ comprising:

a) ~~measuring~~ surveying the level of expression of the erbB-3 gene in a sample ~~from a subject diagnosed with cancer; and~~

b) ~~comparing~~ determining the level of expression of the erbB-3 gene in the sample ~~from the subject to the level of expression of the erbB-3 gene in a sample from a control subject, whereby a greater amount of expression of the erbB-3 gene in the sample from the subject, relative to the level of expression of the erbB-3 gene in the sample from the control subject, wherein overexpression of erbB-3 is classifies the cancer as being correlated with a greater amount of expression of the erbB-3 gene~~ human malignancy.